**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE SIDE**

**WRIT PETITION NO. 496 OF 1996**

Chairman, School Committee
Kai Kashibai Dalavi Shikshan
Sanstha, Nesari, Dist.Kolhapur.... Petitioner

versus

Smt. Bharati Suryakant Wadkar & anr.... Respondent.

Shri S.V.Sadavarte for the petitioner
Shri M.S.Tiopkar for the Respondent no.1.
Mrs. Jyoti Pawar AGP for Respondent no.2.

**CORAM; A.P. DESHPANDE, J.**
**DATED; 5TH APRIL, 2007**

**JUDGMENT;**

1. This petition is filed by School Management taking exception to the judgment and order passed by the Presiding Officer, School Tribunal allowing the appeal filed by the respondent no.1 by granting reinstatement with back wages to the first respondent.

2. The respondent no.1 was having qualification of SSC ATD when she made an application for seeking appointment as Assistant Teacher in a School administered by the petitioner. The petitioner administers a girls High School at Nesari and pursuant to the application made by the respondent no.1 she was

appointed as a Assistant teacher by an order of appointment dated 11-6-1993. The respondent no.1 was appointed with effect from 14-6-1993 on probation for a period of two years. At the end of one academic session viz. end of academic session 1993-94 it appears that the petitioner terminated the service of the respondent by a notice of termination dated 28-3-1994. The termination notice states that the work of the respondent no. 1 was not satisfactory and hence she was being terminated from service. Despite termination of service on the ground of unsatisfactory work with effect from end of academic session 1993-94, the respondent came to be appointed yet again in the next academic session 1994-95 by issuing a fresh order dated 7-6-1994. This order of appointment dated 7-6-1994 goes to appoint the respondent on temporary basis for one academic session i.e. from 13-6-1994 to 29-4-1995. The said appointment order further mentions that the appointment of respondent was in a vacancy reserved for OBC category of the backward class. At the end of academic session 1994-95 a notice of termination was served dated 28-3-1995 and the service came to be terminated from 29-4-1995 i.e. as per the stipulation in the order of appointment. The notice of termination dated 28-3-1995 which goes to terminate the respondent no.1 from service with effect from 29-4-1995 is a termination simplicitor

without assigning any reason whatsoever.

3. Aggrieved by the termination with effect from 29-4-1995 the respondent no.1 filed an appeal under section 9 of the MEPS Act before the School Tribunal. Before the School Tribunal it was contended by the respondent no.1 herein that the initial order of appointment goes to appoint respondent no.1 on probation for a period of two years and for no just cause, the employee was terminated from service on expiry of one academic session. In the submission of the respondent no.1 herein there was no justification for termination of service after one year.

4. Laying emphasis on the fact that the employee was yet again appointed on the commencement of academic session 1994-95, it was contended that the termination effected from the end of academic session 1993-94, could not have been on account of unsatisfactory work of the respondent no.1. It was also submitted that as the appointment of the respondent no.1 was in a permanent post and a clear vacancy the same was on probation and a probationer could be terminated only on account of unsatisfactory work and behaviour. Taking support of the provisions of section 5, it is contended by the learned counsel for the respondent no.1 that in the facts of the present case, it need to

be held that the termination is illegal being in breach of the provisions of section 5 sub section (3) of the Act.

5. Per contra the present petitioner/school management has taken various alternative pleas such as:

i) that the employ did not challenge the termination of her service effected at the end of academic session 1993-94 and hence the respondent no.1 cannot claim any benefit of the order of appointment dated 11-6-1993. It is submitted that whatever right had accord in favour of the respondent no.1 under the appointment order dated 11-6-1993 stands waived on account of her failure to challenge the termination at the end of academic sessions 1993-94.

ii) It is next contended that the appointment order dated 7-6-1994 categorically mentions that the appointment would be temporary in nature and that too against a vacancy earmarked for OBC category. Hence the approval was also granted by the education officer for one year against vacancy of OBC in academic session 1994-95. It thus appears from the record that the education officer had approved appointment of the respondent no.1 herein for academic session 1993-94

for one year and thereafter in the year 1994-95 yet again for one year temporarily against the vacancy reserved for OBC category. In this facts situation the tribunal was called upon to decide the appeal.

6. The tribunal has held that the appointment of the respondent no.1 was on probation as was mentioned in the appointment order dated 14-6-1993. The tribunal proceeds on an incorrect factual position in answering issue no.2 by holding that the appellant before it had completed the probation period of two years. Even assuming in favour of the employee that she has been in continuous service, right since the initial date of appointment viz. 14-6-1993, the employee was terminated with effect from 29-4-1995 by a notice of termination dated 28-3-1995 and it is thus obvious that the employee had not completed two years probation period. The tribunal proceeded on an incorrect assumption that the employee had completed probation period, and proceeded to set aside the order of termination and granted relief of reinstatement with back wages to the respondent no.1. Aggrieved by the judgment and order passed by the tribunal allowing the appeal, the present writ petition has been filed raising the contentions referred to hereinabove.

7. It will not be out of place to state at this

juncture that while issuing Rule in this writ petition, interim relief was granted in the nature of stay of the impugned order passed by the tribunal and as a consequence of it the respondent no.1 has been out of employment for the last several years. The learned counsel appearing for the petitioner so also the learned AGP representing the Education Officer, Zilla Parihad, makes a categorical statement that there is no vacancy in the school to accommodate the respondent no.1 and all other employees have assumed permanency by having put in requisite years of service. It is thus clear that without disturbing the settled position, the respondent no.1 cannot be reinstated in the school. Coupled with this factual position, it is to be seen that the respondent no.1 had hardly put in less than two yeas of service. Initial order of appointment though termed as an appointment on probation was put to an end on completion of one academic session viz academic session 1993-94 and thereafter a fresh order of appointment was issued which was yet again for the next academic session. The education officer had accorded approval to the appointment of respondent no.1 each time for one academic session by treating the appointment as temporary in nature.

8. I find that the tribunal has committed a patent

illegality in holding that the respondent no.1 herein has assumed permanency on completion of two years service on probation. As a matter of fact the respondent no.1 has not completed two years of service at all. Hence the question of assuming permanency does not arise. Hence the conclusion reached by the tribunal that the termination of service after assuming confirmation, in the manner it is sought to be done is contrary to law and unsustainable. After terminating the respondent no.1 from service at the end of academic session 1993-94 when she was again appointed in the next academic session it can safely be assumed that the work of respondent no.1 was satisfactory. Even assuming that the tribunal was right in concluding that the termination of the respondent no.1 was illegal as her work and behaviour was not shown to be unsatisfactory, the tribunal could not have held that the respondent has assume permanancy.

9. As I have already observed hereinabove, that in the present fact situation, it is not possible to grant reinstatement to respondent no.1 as there is no vacancy in existence to accommodate the respondent no.1. In such situation the court can have recourse to the provisions contained in section 11 of the MEPS Act and to be precise section 11(2)(e). The said

provision lays down that if the tribunal reaches a conclusion not to reinstate the employee or in any other appropriate case, the employee can be compensated by payment of salary for a period of six months after the employee has put in less than 10 years of service. I feel it appropriate to compensate the respondent no.1 by directing payment equivalent to the salary of six months. I quantify the amount of salary for the period of six months as Rs.50,000/-, to be paid by the petitioner to the respondent within a period of eight weeks from today.

10. In the result, writ petition is allowed. The impugned order passed by the Presiding Officer, School Tribunal is quashed and set aside. However, I direct the petitioner to pay compensation to the respondent no.1 in the sum of Rs.50,000/- , it being the quantified sum representing six months salary, as is permissible under section 11(2)(e) of the Act within eight weeks from today. Rule made absolute in the above terms.

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